

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on August 15, 2012
Sacramento, California**

PRESENT:

Art R. Carter, Chairperson
Ed Lowry, Member
Michael Wimberly, Executive Officer
Ursula Clemons, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Kari Johnson, Industrial Relations Counsel III
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary
Maria Rios, Legal Secretary

MINUTES OF AUGUST 2, 2012:

(Approval of minutes recording actions of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the August 2, 2012 Board Meeting as amended. Chairperson Carter seconded. The Board voted to approve the draft minutes of the August 2, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

(Information regarding the general administration of cases pending before the Appeals Board)

1. STATISTICS

(Review and discuss most current Board statistics)

ACTION: Executive Officer Wimberly reported on the Board statistics and the July hearing calendar report.

2. 2012 RULEMAKING MATTERS

(Discuss potential Board rulemaking changes)

ACTION: Counsel Johnson reported that stakeholders have requested videoconferencing from the West Covina office for the September 17 Public Hearing on proposed rule changes. Notice of the videoconference will be posted.

3. BOARD MEETING DATES

ACTION: Executive Officer Wimberly reviewed the Board's scheduled meeting dates for the remainder of the calendar year.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

1. 2012/2013 BUDGET

(Review and discuss budget issues for the fiscal year)

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ACTION: Executive Officer Wimberly reported that he responded to a DIR request to analyze the Board's travel expenses for several past fiscal years. He also discussed essential travel as it pertains to Board business as defined under Executive Order B06-11.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: No report.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters and news from the Department and Appeals Board.)

ACTION: No report.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

ACTION: No report.

Any matter not completed at this meeting may be continued to subsequent meetings.

PUBLIC COMMENT:

(Public comment will be entertained during the discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

BLUE DIAMOND GROWERS, 10-R2D1-1280 AND 1281
CALIFORNIA ERECTORS, INC., 10-R1D2-2772 THROUGH 2775
GOLDEN STATE UTILITY CO., 10-R2D3-3354

PLASCOR INC., 12-R3D3-0749-THROUGH 0751

ACTION: Member Lowry moved that the Board approve these Decisions of Administrative Law Judges. Chairperson Carter seconded the motion. The Board voted to approve these Decisions of Administrative Law Judges.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

A-1 ROOF MANAGEMENT AND CONSTRUCTION, 11-R1D4-2291
ABM INDUSTRIES, 11-R2D2-2024
ACCI ROOFING SERVICES, 11-R3D2-2712 AND 2713
AERO ANTENNA TECHNOLOGY, 11-R4D3-3246
AGRO-JAL FARMS, 11-R4D3-2976 AND 2977
AMERICAN NONWOVENS, INC., 12-R3D6-0453
APEL CONSTRUCTION MANAGERS INC., 12-R4D1-0018 AND 0019
BORGA, INC., 10-R2D5-2717
BRITZ-SIMPLLOT GROWER SOLUTIONS, 11-R2D5-3178
DESERT VIEW POWER, 11-R6D4-3267 *
GARRETT-CALLAHAN COMPANY, 11-R2D2-2093 *
GCU TRUCKING, INC., 11-R1D4-1730
GORILLA'S POLISHING CORP., 12-R3D1-0207
GRANADA CARE HOMES, INC., 11-R2D2-1374 *
GRIMES ROCKS, INC., 12-R5D2-0370
HRM FARM LABOR SERVICES, 12-R4D3-0291
HYATT LONG BEACH, 11-R3D5-1851 AND 1852
JAIME ZEPEDA LABOR CONTRACTING INC., 12-R3D3-0607
LESTER KOEHN, 12-R2D4-0119 AND 0120
L.A. COUNTY MTA, 11-R4D1-2682
LA MESA SPRING VALLEY SCHOOL DISTRICT, 11-R3D2-2936
LUNDAY THAGARD COMPANY, 11-R6D4-3269
MARZIA, INC., DBA QOD, USA, 11-R1D1-2428 TO 2429 *
MAURICE CARRIE WINERY, 11-R3D2-2229
McMAHON STEEL CO INC., 11-R6D2-2541 AND 2542
MEHLING RANCH, 10-R2D5-2516
MOOREFIELD CONST., INC., 10-R2D5-0996
MOUNTAIN ENTERPRISES INC., 10-R2D4-0081 AND 0082
ORANGE COAST BUILDING SERVICES INC., 11-R3D1-2380 THROUGH 2382
PEARL DEVELOPMENT CORP., 11-R4D3-3187 THROUGH 3189
PEREZ FARMS, 12-R2D4-0051 THROUGH 0053
PETCO ANIMAL SUPPLIES, INC., DBA PETCO, 11-R1D1-1919
PROMOTIONAL SIGNS INC. DBA PROMOTIONAL SIGNS UNLIMITED,
12-R3D6-0451 AND 0452
RALPH'S GROCERY COMPANY, 11-R4D1-3118
RESTORATION HARDWARE, 12-R4D2-0098 AND 0099
R&G (USA) INTERNATIONAL, INC., 12-R1D4-1794 AND 1795*

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ROJI CORPORATION DBA PRINT B3, 12-R3D6-0816
SAN JOAQUIN HELICOPTERS, 09-R2D5-3928 AND 3929
SF PUC-WASTEWATER ENTERPRISE, 11-R1D1-1918
SHIMMICK CONST CO. INC./OBAYASHI JOINT VENTURE, 11-R3D2-2134
SL ENGINEERING CO., 11-R3D1-2560 AND 2561
STATE COLLEGE CAR WASH, 11-R6D2-1861
STONE ETC., INC., 10-R1D4-1541 THROUGH 1544 *
TERRY JOHNSON TRUCKING, INC., 11-R2D5-1415
DAVID TSUI DBA DANVILLE CREEKSIDE APARTMENTS, 11-R2D2-1842
THE BEST CAR WASH AND LUBE INC., 12-R3D3-0498 *
TURNER CONSTRUCTION COMPANY, 11-R1D1-2018
UNITED SITE SERVICES, 12-R2D5-0300
IGOR VASEY DBA ACCESS SCAFFOLDING COMPANY, 10-R1D1-2253
THROUGH 2256
VERIZON CALIFORNIA INC., 12-R3D3-0748
WAGNER STEEL INC., 11-R6D2-3256 THROUGH 3258

YOSEMITE FALLS CAFÉ, 10-R2D5-3279

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Chairperson Carter seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

GOD BLESS TIRE SHOP, INC., 11-R6D7-0972 AND 0973

ACTION: This matter was held over until the next meeting of the Board.

PRESTON PIPELINES, INC., 09-R6D7-3345

SHIRO SHIOZAWA DBA SHIRO'S AUTO BODY, 12-R6D7-9086

ACTION: Member Lowry moved that the Board accept the Legal Unit's recommendation to deny these Petitions for Reconsideration. Chairperson Carter seconded. The Board voted to accept the Legal Unit's recommendation to deny these Petitions for Reconsideration.

A TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 10-R5D1-3029

ACTION: Member Lowry moved that the Board accept the Legal Unit's recommendation to grant this Petition for Reconsideration. Chairperson Carter seconded. The Board voted to accept the Legal Unit's recommendation to grant this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

MATTERS PENDING RECONSIDERATION:

A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
ALLIED SALES & DISTRIBUTION, INC., 11-R6D2-0480
AC TRANSIT, 08-R1D4-0135
AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221
BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH 2241
BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563

CALIFORNIA HIGHWAY PATROL, 09-R2D1-3762

ACTION: Counsel Johnson recused herself from discussion of this matter.
Member Lowry moved that the Board vote to approve this draft Decision
After Reconsideration for signature as amended. Chairperson Carter
seconded. The Board voted to approve this draft Decision After
Reconsideration for signature as amended.

C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
CENTRAL VALLEY ENGINEERING & ASPHALT, INC.
08-R2D1 5001 AND 5002
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960

COUNTY OF LOS ANGELES DEPT. OF PUBLIC WORKS, 07-R4D2-2540

ACTION: Member Lowry moved that the Board vote to approve this draft
Decision After Reconsideration for signature as amended. Chairperson
Carter seconded. The Board voted to approve this draft Decision After
Reconsideration for signature as amended.

CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362

DELTA TRANSPORTATION, INC., 08-R2D1-4999

ACTION: Member Lowry moved that the Board vote to approve this draft
Decision After Reconsideration for signature as amended. Chairperson
Carter seconded. The Board voted to approve this draft Decision After
Reconsideration for signature as amended.

DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431
DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896
DUKE PACIFIC, INC., 08-R3D3-574
ECO BAY SERVICES, INC., 10-R1D1-1233 THROUGH 1236

EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
EZ MIX, INC., 08-R4D3-1898

FDO INC. DBA GRAND AMERICAN DOORS, 10-R6D2-1215 THROUGH 1219
ACTION: Member Lowry moved that the Board vote to approve an Order
of Remand for this Matter Pending Reconsideration. Chairperson Carter
seconded. The Board voted to approve an Order of Remand for this
Matter Pending Reconsideration

FORTUNA IRON WORKS 06-R2D3-4222
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687

HOLLINGER CONSTRUCTION INC., 11-R4D1-0891
ACTION: Member Lowry moved that the Board vote to approve an Order
of Remand for this Matter Pending Reconsideration. Chairperson Carter
seconded. The Board voted to approve an Order of Remand for this
Matter Pending Reconsideration

HOME DEPOT, 10-R3D6-3284
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IRWIN INDUSTRIES, 08-R6D4-1454
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
MARINE TERMINALS, 08-R6D2-1920

McPHERSON ENTERPRISES, INC., 10-R2D5-0995
ACTION: Member Lowry moved that the Board vote to approve an Order
of Remand for this Matter Pending Reconsideration. Chairperson Carter
seconded. The Board voted to approve an Order of Remand for this
Matter Pending Reconsideration

MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC., 08-R2D1-0025 AND 0026
POUK & STEINLE, INC., 09-R3D3-0491
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-3128 THROUGH 3131
SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196

SDUSD – PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
SMUD, 08-R2D1-4887 THROUGH 4889
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
08-R2D1-3414 THROUGH 3418
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERES FROZ SUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443

TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION,
05-R2D4-2650 AND 2651

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature as amended. Chairperson Carter seconded. The Board voted to approve this draft Decision After Reconsideration for signature as amended.

A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459
AND 0460

LEGISLATION:

PENDING LITIGATION

1. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)
2. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
3. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
ACTION: Chief Counsel Mojcher reported on the status of this matter.
4. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
5. WPCS INTERNATIONAL SUI SUN CITY, INC., 34-2010-80000430 (09- 9280/9281)
ACTION: Chief Counsel Mojcher provided an update on this matter.
6. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-R5D1-3611)
7. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
8. SMUD, 34-2010-80000723 (08-R2D1-4887)

9. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
10. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
11. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
12. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010 (08-R2D1-3273)
13. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
14. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
15. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
ACTION: Chief Counsel Mojcher reported on the status of this matter.
16. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
17. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
18. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
19. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
20. DUININCK BROS., INC., 34-2012-80001129 (06-2871)

COURT OF APPEAL:

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)
ACTION:

PERSONNEL: *(Issues regarding staff)*
ACTION: No Report

The Closed Session adjourned at 11:36 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 11:37 a.m.